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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)

MUR 6321)

Mark Reed for Congress and)

Norman Paul Devereaux, as Treasurer)

Mark Steven Reed)

CASE CLOSURE UNDER THE
ENFORCEMENT PRIORITY SYSTEM

GENERAL COUNSEL'S REPORT

Under the Enforcement Priority System, matters that are low-rated

are

forwarded to the Commission with a recommendation for dismissal. The Commission has determined that pursuing low-rated matters, compared to other higher-rated matters on the Enforcement docket, warrants the exercise of its prosecutorial discretion to dismiss these cases. The Office of General Counsel scored MUR 6321 as a low-rated matter.

In this matter, the complainant alleges that Mark Steven Reed, Mark Reed for Congress and Norman Paul Devereaux, in his official capacity as treasurer (collectively "the Committee"),¹ violated the Federal Election Campaign Act of 1971, as amended ("Act"), by failing to file disclosure reports, in accordance with 2 U.S.C. §§ 434(a) and (b) and 11 C.F.R. § 104.5(a). Specifically, the complaint alleges that the Committee received or made more than \$5,000 in contributions or disbursements, but failed to file a single disclosure report, despite conducting an active and expensive advertising campaign.

The complaint also alleges that the Committee produced and distributed, at public events, two flyers that promoted Mr. Reed's candidacy, which failed to include disclaimer

¹ The complaint names Mark Steven Reed, Sr. as treasurer; however, the Committee's Statement of Organization lists Norman Paul Devereaux as treasurer and Mark Steven Reed, Sr. as assistant treasurer. Mr. Devereaux submitted the Committee's response to the complaint. Mark Reed is a candidate for Congress in California's 27th Congressional District.

1 information stating who had paid for them, in apparent violation of 2 U.S.C. § 441d(a) and
2 11 C.F.R. §§ 110.11(a) and (b)(1).

3 In support of these allegations, the complainant points to statements made by the
4 Committee on its website, in which the Committee claims to have purchased 11 poster-sized
5 billboard spaces and states that, "[w]e were able to get the billboard produced and most of the
6 eleven locations paid for thanks to the kind support of many of those who have visited this
7 [web]site." The complainant attaches a copy of the Committee's web page discussing the
8 billboard advertisements and a copy of the Committee's solicitation postcard. The complainant
9 contends that the vendor who sold the Committee the 11 billboard spaces, CBS Outdoor, has
10 confirmed the purchase, and provides a copy of the vendor's rate card to demonstrate that the
11 cost of the bulletin board advertisements would have exceeded \$5,000.

12 In further support of his allegation that the Committee failed to provide proper
13 disclaimers, the complainant attaches copies of what are alleged to be two flyers that were
14 distributed by the Committee at public events. The two flyers advocate for the election of Reed
15 and include the phrase "www.MarkReedforCongress.com," but do not indicate who paid for or
16 authorized the advertisement.

17 The respondents assert that the Committee did not raise or spend in excess of \$5,000
18 until the second quarter of 2010. Though the Committee admits that its 2010 Pre-Primary
19 Report was filed untimely, and also claims that the late filing was due to the treasurer's
20 "ignorance," it nevertheless asserts that its July Quarterly Report was timely filed, on July 15,
21 2010, and that both reports contained all requisite disclosures.

22 The Act states that an individual becomes a candidate for federal office when his or her
23 campaign either receives or makes contributions or expenditures aggregating in excess of
24 \$5,000. 2 U.S.C. § 431(2). The Act further provides that the principal campaign committee for

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1 a candidate for the House of Representatives must file a pre-election report, no later than the
2 12th day before any election in which the candidate is seeking election or nomination, and
3 quarterly reports no later than the 15th day after the last day of each calendar quarter. 2 U.S.C.
4 §§ 434(a)(2)(A)(i) and (iii).

5 Though its 2010 Pre-Primary Report was admittedly filed late, the disclosure reports
6 filed by the Committee indicate that the Committee did not make or receive in excess of \$5,000
7 in receipts or expenditures until the second quarter of 2010, and that no other disclosures were
8 due at the time of the complaint. Moreover, the July 15, 2010 Quarterly Report was timely filed
9 and, according to the response, all appropriate receipts and expenditures were disclosed and are
10 now a matter of public record.

11 The complainant alleges that the Committee failed to include appropriate disclaimers on
12 its flyers. The Committee did not address the disclaimer allegations in its response. Political
13 committee campaign materials that require disclaimers include, *inter alia*, newspapers,
14 magazines, mailings, or other types of general public political advertising. See 2 U.S.C.
15 § 441d(a) and 11 C.F.R. § 110.11(a). Based on the available information, we are unable to
16 determine the complete scope and manner in which the flyers, which were alleged to have been
17 distributed by the Committee, were disseminated. We note, however, that the Committee's
18 2010 Pre-Primary Report reflects an expenditure totaling \$350 for the purpose of "[p]rinting
19 paper fliers." This expenditure may indicate that the production of the flyers was limited.
20 Additionally, the allegations in the complaint provide that the flyers were "handed out" at
21 events, which further shows that the distribution of the flyers could have also been limited.
22 Thus, given the seemingly limited nature of both the production and distribution of the flyers,
23 they may not have been subject to the disclaimer requirements as set forth in 2 U.S.C. § 441d(a)
24 and 11 C.F.R. § 110.11(a).

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1 In light of the fact that the Committee has filed its required disclosure reports, along with
2 the apparent limited scope of the flyers' production and dissemination, and in furtherance of the
3 Commission's priorities and resources relative to other matters pending on the Enforcement
4 docket, the Office of General Counsel believes that the Commission should exercise its
5 prosecutorial discretion and dismiss this matter. *See Heckler v. Chaney*, 470 U.S. 821 (1985).
6 Additionally, this Office would plan to remind Mark Reed for Congress and Norman Paul
7 Devereaux, in his official capacity as treasurer, of the requirements under 2 U.S.C.
8 § 434(a)(2)(A)(i), concerning the timely filing of its financial disclosure reports.


9 **RECOMMENDATIONS**

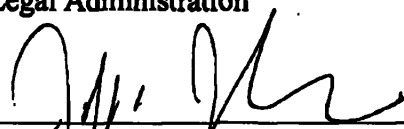
10 The Office of General Counsel recommends that the Commission dismiss MUR 6321,
11 close the file, and approve the appropriate letters. Additionally, this Office recommends
12 reminding Mark Reed for Congress and Norman Paul Devereaux, in his official capacity as
13 treasurer, of the requirements under 2 U.S.C. § 434(a)(2)(A)(i), concerning the timely filing of
14 its financial disclosure reports.

15 Christopher Hughey
16 Acting General Counsel


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21 Date 10/21/10

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